

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

KARL S. BEEMER,

Plaintiff(s),

CASE NUMBER: 07-10109

HONORABLE VICTORIA A. ROBERTS

v.

COMMISSIONER OF SOCIAL SECURITY,

Defendant(s).

_____ /

ORDER

Plaintiff Karl S. Beemer filed an Application for Disability Insurance Benefits that requested disability benefits from December 16, 1999 forward, claiming disability due to herniated discs in his back. The Administrative Law Judge concluded that Plaintiff was not under a "disability" as defined in the Social Security Act.

On December 3, 2008, Plaintiff entered into a Social Security Fee and Expense Agreement with his counsel. Plaintiff agreed that:

If Social Security or a Federal Court favorably decides my claim(s) **after the second hearing by an Administrative Law Judge, or if the claim goes to Federal Court**, I will pay the Law Firm of Freid, Gallagher, Taylor & Associates, P.C., a fee equal to **25%** of the past-due benefits accrued on my claim(s) and any family claim(s). I agree to pay the entire fee when my first past-due benefits are paid. If no past-due benefits are awarded, I will pay no fee.

(Emphasis in original).

On March 18, 2009, the Court remanded Plaintiff's case to the Commissioner to determine whether Plaintiff has the residual functional capacity to perform work in the economy.

On January 11, 2010, the Social Security Administration awarded Plaintiff

\$83,036.00 in past-due benefits. The Administration withheld \$20,759.00 of the past-due benefits to pay any attorneys' fees.

Before the Court is counsel for Plaintiff's "Motion for Approval of Social Security Fees." (Doc. #35). He asks the Court to award him \$5,225.00 in fees for services performed before this Court (19 hours @ \$275.00 per hour). Counsel filed a second Fee Petition with the Office of Disability Adjudication and Review requesting a fee of \$6,000.00 for services performed before the administrative tribunal. *See Horenstein v. Sec'y of Health & Human Services*, 35 F.3d 261, 262 (6th Cir. 1984):

in cases where the court remands the case back to the Secretary for further proceedings, the court will set the fee - limited to 25 percent of past-due benefits - for the work performed before it, and the Secretary will award whatever fee the Secretary deems reasonable for the work performed on remand and prior administrative proceedings.

Plaintiff objected to the motion on February 8, 2010. While he agrees that attorneys' fees should be limited to 25% of past-due benefits, he believes his counsel's hourly rate is more than \$500.00 per hour. According to Plaintiff, his counsel's rate should be \$200.00 per hour.

The Court overrules Plaintiff's objections; counsel's hourly rate is \$275.00, which is a reasonable rate. Counsel's motion is **GRANTED**. He is awarded \$5,225.00 for services performed before this Court. The fee must be paid from the \$20,759.00 that the Administration withheld.

IT IS ORDERED.

s/Victoria A. Roberts
Victoria A. Roberts
United States District Judge

Dated: February 18, 2010

The undersigned certifies that a copy of this document was served on the attorneys of record by electronic means or U.S. Mail on February 18, 2010.

s/Linda Vertriest _____
Deputy Clerk